

SERVED: December 18, 1996

NTSB Order No. EA-4507

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 4th day of December, 1996

_____)	
LINDA HALL DASCHLE,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14366RO
v.)	
)	
JAMES G. ADCOCK,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent has appealed from two decisions of Administrative Law Judge William R. Mullins, issued on February 29 and April 9, 1996.¹ The law judge granted the Administrator's motion for judgment on the pleadings, affirming an order of the Administrator revoking respondent's private pilot certificate, on

¹ The two decisions are attached.

finding that respondent had violated 14 C.F.R. 61.15(a)(2).² The law judge's April 9 order denied respondent's request for reconsideration of his February 29 order granting judgment on the pleadings. We deny the appeal.

The Administrator's complaint and order of revocation alleged that, in 1984, respondent was convicted in United States District Court of possession of two pounds of cocaine, with intent to distribute. At the time the revocation order was issued, in 1996, respondent was near the end of his incarceration.

Respondent's appeal from the complaint, as well as the various letters and pleadings he filed before the law judge, raise numerous procedural, Constitutional, and due process claims. He argues that there has been an unnecessary "rush to judgment" in the case, that his incarceration prevented him from preparing adequately and/or obtaining counsel (and that the proceeding should have been delayed until he was released, which apparently has since occurred), that, as a pro se litigant, he should have been subject to less stringent standards (and granted

² Section 61.15(a)(2) provides:

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for--

(2) Suspension or revocation of any certificate or rating issued under this part.

the continuance he requested), that the Administrator has abused his prosecutorial discretion in seeking revocation here, that laches prohibits this delay in prosecution, and that the law judge erred in granting judgment on the pleadings because there were issues that remained to be resolved and because the law judge erroneously relied on what respondent termed a "constructive admission" contained in a letter to the FAA that the law judge arguably should not have considered.

We see no error in the law judge's handling of this case or his conclusions. The law in this area is all too clear, and respondent's arguments are unavailing.

We have held, and the courts have affirmed, that

revocation should be upheld on charges under section 61.15 without regard to aircraft involvement if the drug offense underlying the charge is serious enough to draw into question the airman's qualification to hold a certificate. . . . In our judgment, any drug conviction establishing or supporting a conclusion that the airman possessed a controlled substance for profit or commercial purposes is a flagrant one warranting revocation under the regulation. An individual who knowingly participates in a criminal drug enterprise for economic gain thereby demonstrates such a disregard for the rights and lives of others that he may reasonably be viewed as lacking the capacity to conform his conduct to the obligations created by rules designed to ensure and promote aviation safety.

Administrator v. Piro, NTSB Order No. EA-4049 (1993), at 3-4.

Respondent argues that the FAA should not have introduced into the record a January 1, 1996 letter in which he references his "conviction for possession with intent to distribute" (his "constructive admission" of his conviction), and further argues that he was convicted for possession only, there being no "criminal drug enterprise for economic gain." Nevertheless, and

even were we to ignore the letter, there is other, independent evidence in the form of the "Judgment and Probation/Commitment Order" that establishes that respondent was, in fact, convicted of possessing approximately two pounds of cocaine, *with intent to distribute*. This conviction falls squarely within the policy expressed in Piro. See also Kolek v. Engen, 869 F.2d 1281, 1285 (9th Cir. 1989) (NTSB approval of revocation for narcotics violations not involving use of aircraft "helps to establish that revocation for such violations is consistent with the sanctioning policy of the FAA, and it puts all certificate holders on notice of that consistency"); and Administrator v. Beahm, NTSB Order No. EA-3769 (1993) (drug conviction is grounds for revocation whether or not an aircraft was involved in crime). That another inmate received only a 180-day suspension for a conviction whose circumstances were not made known to us does not compel a different result. We do not review such issues of prosecutorial discretion;³ furthermore, the Administrator has introduced into this record counsel's notes regarding his choice of sanction, which suggest no basis for our intervention. Under existing policy and precedent, respondent's particular drug conviction, per se, supports revocation of any and all FAA certificates.

Respondent's due process/fair hearing arguments are equally unconvincing. Respondent has no right to counsel in these cases (see, e.g., Administrator v. Olsen and Nelson, NTSB Order No. EA-3949 (1993)), nor does the Constitutional protection against

³ Administrator v. Renner, NTSB Order No. EA-3927 (1993).

double jeopardy apply to this civil, remedial proceeding. See Administrator v. Zukas, NTSB Order No. EA-4464 (1996), and Administrator v. Beauchemin, NTSB Order No. EA-4371 (1995), and cases cited there. Further, the Administrative Procedure Act does not require that we provide respondents with relevant FAA and/or NTSB research materials.⁴ Administrator v. Olsen and Nelson, supra. The doctrine of laches is relevant to our docket only in the context of our stale complaint rule (49 C.F.R. 821.33), which respondent acknowledges does not apply. Moreover, the FAA's delay in prosecution is not entirely surprising, as it is only on respondent's release from prison that the question of future use of this certificate need be resolved. See also Renner, supra (1984 and 1987 convictions as basis for 1991 enforcement action).

All respondent's submissions -- authorized and unauthorized letters and pleadings -- have been considered by the law judge and by this Board, as has all relevant precedent. In this case, however, respondent's conviction for possession of cocaine with the intent to distribute it compels us to affirm the Administrator's order of revocation.

⁴ There is no doubt that respondent had access to a considerable law library in preparing his submissions. And, we have thoroughly reviewed the facts to ensure that respondent's case has been thoroughly considered despite his lack of counsel.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The revocation of respondent's airman certificate shall begin 30 days from the date of service of this order.⁵

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁵ For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to 14 C.F.R. 61.19(f).